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Item DL.

AUSTIN CITY CLERK  
POSTING: DATE/TIME

Rule No: R161-10.22e

2010 MAR 15 PM 2 C1

NOTICE OF EMERGENCY RULE ADOPTION ADOPTION DATE: March 16, 2010

By: Marc Ou, City Manager

The City Manager has adopted the following emergency rule. This notice is issued under Chapter 1-2 of the City Code.

#### EFFECTIVE DATE OF EMERGENCY RULE

The rule adopted by this notice is effective on March 16, 2010 and expires on July 9, 2010 (not later than the 121st day after the effective date). The rule may be renewed one time after the expiration date. If the rule is renewed, it will expire on the 61st day after the renewal date.

A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Department of Planning and Development Review, located at 505 Barton Springs Road, 4<sup>th</sup> Floor, and  
Office of the City Clerk, City Hall, located at 302 West 2nd Street, Austin, Texas.

#### TEXT OF EMERGENCY RULE

Section 3-5-4, Mitigative Measures, of the Environmental Criteria Manual is amended to read:

Proposals which will enhance any aspect of city's urban forest may be pursued in consultation with the City Arborist. Proposals should be submitted in writing. In unusual situations and upon approval of the City, funds may be provided to the Urban Forest Replenishment Fund (UFRF) as part of the mitigation requirement. Payments into the UFRF may be used for:

- (1) off-site tree planting and maintenance;
- (2) promoting tree care and preservation;
- (3) urban forest conservation;
- (4) enforcement of City tree protection and mitigation regulations.

~~as a partial reimbursement for trees removed due to development. Utilizing a standard formula of one caliper inch of replacement value equivalent to \$75.00; funds may be placed into the UFRF a dedicated Urban Forestry Replenishment~~

~~Fund. (NOTE: This option of funding off-site planting is not intended to facilitate the excessive removal of trees.) Trees have varying values based upon numerous tree and site conditions (see ECM 3.5.1). The following mitigation rates apply for medium valued trees; however the City Arborist may raise or reduce these rates for high or low valued trees:~~

- Heritage – 300%
- greater than 19 diameter inches and Class 1 or 2 within Appendix F – 100%
- 8 to 19 diameter inches and Class 1 or 2 within Appendix F – 50%
- greater than 19 diameter inches and not Class 1 or 2 within Appendix F – 50%
- 8 to 19 diameter inches and not Class 1 or 2 within Appendix F – 25%
- sizes smaller than 8 diameter inches (for example, development in Parks under ECM Section 5.3.0 or and Hill Country Roadways under ECM Section 2.7.0) – 50%

#### NATURE OF EMERGENCY

Adoption of this rule on an emergency basis is necessary to implement, administer, enforce and comply with Chapter 25-8 of the City Code related to the Heritage Tree Ordinance.

#### AUTHORITY FOR ADOPTION OF RULE

The authority and procedure for the adoption of a rule to assist in the implementation, administration, or enforcement of a provision of City Code is established in Chapter 1-2 of the City Code. The authority to regulate pursuant to the Heritage Tree Ordinance is established in Chapter 25-8.

**CERTIFICATION BY CITY ATTORNEY**

By signing this Notice of Emergency Rule Adoption (Rule 161-10.22e), the City Attorney certifies that the City Attorney has reviewed the rule and finds adoption of the rule to be a valid exercise of the City Manager's authority.

**REVIEWED AND APPROVED**


  
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Marc O'Connell, City Manager

  
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David Smith, City Attorney

  
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Greg Gjornes, Director  
Department Planning and Development Review

This NOTICE OF THE EMERGENCY RULE ADOPTION was posted on a central bulletin board at City Hall at the following date and time:

Date: 3/15/2020  
Time: 2:01 p.m.

  
\_\_\_\_\_  
Shirley A. Gentry, City Clerk

## **ENFORCEMENT PROVISIONS NEEDED FOR TREE ORDINANCE [v.2]**

Prepared by Brad Rockwell

There is much concern that provisions of the tree ordinance have been and will continue to be ignored because the penalties often incurred for destruction of the tree and very insignificant, particularly if big development projects are at stake. City staff has even opposed charging a fee for a tree removal permit on the grounds that such a fee would discourage compliance, implying that compliance is largely a discretionary and volunteer matter.

The tree ordinance should be amended as follows to expressly include penalties that will serve as an important incentive to compliance with the tree ordinance. Each subsection – (A), (B) and (C) – is independent and provides its own measure of enforcement. The daily Class C misdemeanor fines are based on section 1-1-99 of the current City of Austin Code of Ordinances and the civil penalty provisions are based on section 54.017(b) and 54.001(b) of the Texas Local Government Code.

### **§ 25-8-649 ENFORCEMENT**

- (A) It is unlawful and an offense to remove or cause to be removed a Heritage tree without a permit or unexpired variance and without having obtained approval from the City of a mitigation plan for the particular tree.
  - (1) For each day a Heritage tree is unlawfully removed without the existence of an approved mitigation plan specific to that tree, the landowner and all other individuals and entities who have caused the Heritage tree to be removed are subject to a Class C misdemeanor fine not to exceed \$2000 per day for each removed tree until a mitigation plan is approved.
  - (2) For each day a Heritage tree is unlawfully removed without the existence of an approved mitigation plan for that tree, the landowner and the individuals and entities who have caused the Heritage tree to be removed are subject to civil penalties not to exceed \$1000 per day for each removed tree until a mitigation plan is approved.
- (B) When any violation of the Code provisions protecting Heritage trees occurs on a construction site, City staff shall issue a stop work order and no further construction shall be allowed on the site until the tree removal is fully mitigated.
  - (1) No certificate of occupancy shall issue until an approved mitigation plan has been implemented and all fines imposed for the violation have been paid.
  - (2) The prohibition in this subsection against further construction does not apply to construction activities needed to secure the site, prevent a nuisance,

prevent environmental contamination or discharge, protect property, health or human safety, or mitigate the removal of a Heritage tree.

(C) Before construction commences on a site, the applicant must provide fiscal security should be provided in the amount of \_\_\_\_\_ for each protected tree on any construction site.

(1) This security will be returned to the applicant after full mitigation has occurred and the replacement trees are shown to be healthy two years after the later of either: a) a certificate of occupancy is issued; or b) the mitigation plan has been fully executed.

(2) In the event that the replacement trees are not shown to be healthy pursuant to the terms of subsection (C)(1), the applicant may secure return of the security two years after new trees are planted and shown to be healthy pursuant to a new mitigation plan approved by the City. Alternatively, if within two and a half years after the later of a certificate of occupancy was issued or the original mitigation plan was executed, the applicant has not submitted and secured approval for a new mitigation plan, the City may use the security at its discretion to plant and care for trees, including, but not limited to, trees on the property that was the original construction site.

(D) These enforcement provisions are non-exclusive and are in addition to any other civil penalties or remedies or criminal liability that may exist under other law.